

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,
W.A. DREW EDMONDSON, in his
capacity as ATTORNEY GENERAL
OF THE STATE OF OKLAHOMA,
et al.

Plaintiffs,

V.

TYSON FOODS, INC., et al.,

Defendants.

No. 05-CV-329-GKF-SAJ

TRANSCRIPT OF PROCEEDINGS

JUNE 14, 2007

MOTIONS HEARING

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Mr. Louis W. Bullock
Mr. M. David Riggs
Mr. Richard T. Garren
Mr. Frederick C. Baker
Ms. Kelly S. Burch
Mr. Robert A. Nance
Mr. J. Trevor Hammons
Ms. Ingrid Moll

For the Defendants: Mr. Robert W. George
Mr. Jay T. Jorgensen

Glen R. Dorrough
UNITED STATES COURT REPORTER

EXHIBIT

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1 might just discuss this here because it kind of jumps to the
2 forefront in one's mind when one reads New Mexico. The problem
3 I'm having as I sit here -- and granted I'm new to this
4 party -- I'm not clear and from reading defendants' answers up
5 until now it doesn't appear defendants were clear that CERCLA
6 even applies here. And if you look at Judge Joyner's motion or
7 order with regard to the facility issue, he declined to rule on
8 this idea that, what, a million acres constituted a facility.
9 So I'm looking at this right now with a lot of skepticism that
10 New Mexico even applies because I'm not certain that CERCLA
11 applies. So you know, I can understand, Mr. George, your
12 eagerness to jump on New Mexico because as I sit here right
13 now, and most of you-all have appeared before me, I can have my
14 opinion changed, but as Mr. Riggs knows, I mean, I like oral
15 argument because a lot of matters are clarified in oral
16 argument.

17 But as I read New Mexico, it seems if CERCLA does
18 apply, that punitive damages are out, that attorney fees are
19 questionable, that federal common law is out. So that's one of
20 the issues here that begs the question, well, maybe plaintiffs
21 want to jettison CERCLA. At which point defendants are put
22 into a very interesting position of arguing, Judge, CERCLA
23 applies and potentially going to the EPA and saying this ought
24 to be a Superfund site. I doubt you're going to do that but, I
25 mean, this is a very interesting issue. I mean, can we all